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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 18 2006

First Named Applicant: Kitsukawa

Art Unit: 2614

Serial No.: 09/802,635

Examiner: Manning

Filed: March 9, 2001

50P4371

For: SYSTEM AND METHOD FOR BILLING FOR
INTERACTIVE TELEVISIONDecember 18, 2006
750 B STREET, Suite 3120
San Diego, CA 92101**PETITION UNDER RULE 181 (MPEP §1002.02(c)) RE NOTICE OF NON-COMPLIANT BRIEF**

Commissioner of Patents and Trademarks

Dear Sir:

This petition is submitted under Rule 181 and paragraph 3 of MPEP §1002.02(c), which does not indicate that any fee is required. Appellant notes that since this petition does not toll the time period for replying to the Notices (MPEP §1205.03), presumably even when they are wrong as in this case, a substitute brief attempting to comply with the examiner's allegations of non-compliance, as best understood by Appellant, has been filed.

Repeated Notices of Non-Compliant Brief have been issued in this case after the filing of both the Answer and subsequent Reply, rendering the Notices unseasonable. That is the first error in procedure, and because of it Appellant requests that the Notices be vacated.

Second, the Notices are incorrect in respect of both allegations leveled in them. First, the allegation is incorrect that the summary of claim 2 failed to include citations to the specification. The summary of claim 2 used the well-understood legal shorthand term "supra" to refer to specification citations in the immediately

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preceding paragraph. There is no prohibition in the rules against specification citations using well-understood legal shorthand, and that which is not prohibited is allowed. Notwithstanding Appellant's subsequent filing of a substitute brief replacing "supra" with the page and line numbering for which the term was used as a proxy, Appellant requests either that the Notices be vacated or that the MPEP be amended to clarify that well-understood, common legal term of shorthand that finds ubiquitous employment in legal documents world-wide are not tolerated in Patent Office briefs.

Turning to the allegation that the "arguments" section (section 7 of the Brief) is defective for failing to present each ground of rejection for review and citations of statutes relied on, Appellant is baffled. MPEP §1205.02 explains that if, for instance, a case is being relied on, the case must be cited as authority, but in the present application Appellant is not arguing any case law or statutes. The examiner is, and those statutes have been repeated where they are supposed to appear - in Section 6.

As to the requirement that "each ground of rejection must be treated under a separate heading", Appellant acknowledges this - and has so treated the format of Section 7, in which the headings "a" and "b" (corresponding to issues "a" and "b" in Section 6) appear. Why then the repeated allegations that headings are lacking?

Appellant notes that the examiner continues to utterly fail to explain why it is (presumably) his opinion that letters are insufficient headings. In closely reviewing MPEP §1205.02, Appellant notes the repeated use of advisory language (e.g., "claims argued as a group *should* be placed under a subheading identifying the claim by number") as opposed to mandatory language such as "shall" or "must". Note that the examples given on page 1200-15 (Rev. 3, August 2005 which is the latest revision of Chapter 1200) are

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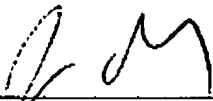
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explicitly characterized as "possible" headings. Indeed, the MPEP conspicuously disavows any mandatory heading format by characterizing the discussion as "best practice." Failure to adhere to advisory guidance does not translate into a defective brief; if the Patent Office wished to make the headings discussion in the MPEP mandatory, it could have used, but did not, mandatory language, thereby deliberately giving appellants discretion in the particular format of the headings. Accordingly, Appellant petitions for vacatur of the Notices as being improperly based on allegations of non-compliance with advisory, not mandatory, guidance.

Respectfully submitted,



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